

108 FERC ¶ 61,144  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

New England Electric Transmission Corporation  
New England Hydro Transmission Corporation  
New England Hydro-Transmission Electric Company, Inc.

Docket No. EL04-74-000

ORDER ON WAIVER REQUEST

(Issued August 5, 2004)

1. On January 20, 2004, New England Electric Transmission Corporation, New England Hydro Transmission Corporation, and New England Hydro-Transmission Electric Company, Inc. (collectively, the Hydros) submitted a request for waiver of Order No. 2003's<sup>1</sup> requirement that they adopt the *pro forma* Large Generator Interconnection Procedures (*pro forma* LGIP) and the *pro forma* Large Generator Interconnection Agreement (*pro forma* LGIA). In this order, we will dismiss Hydros' Order No. 2003 waiver request as discussed below. This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service are just and reasonable and thus encourages more competitive markets.

**Background**

2. Order No. 2003 requires that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce must amend their open access transmission tariffs (OATT) on file with the Commission to include the *pro forma* LGIP and *pro forma* LGIA.<sup>2</sup> Public utilities that do not have an OATT on file are not required to comply with Order No. 2003 since they do not have an OATT to amend.<sup>3</sup>

---

<sup>1</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *reh'g pending*.

<sup>2</sup> Order No. 2003 at P 1.

<sup>3</sup> See 18 C.F.R. § 35.28(f)(1) (2004); *see also* Order No. 2003-A at P 700, 710. The Hydros were granted waiver of Order No. 888 in Northern States Power Company (Minnesota), *et al.*, 76 FERC ¶ 61,250 at 62,296 (1996), *order on rehearing*, Black Creek Hydro, Inc. *et al.*, 77 FERC ¶ 61,232 at 61,943 (1996).

**Hydros' Waiver Request**

3. The Hydros, which do not have an OATT on file with the Commission,<sup>4</sup> state that they are limited purpose companies that own and operate a portion of a single transmission asset, the Hydro-Quebec HVDC Intertie (Phase I/II), which is a project-funded high-voltage direct current (DC) facility connecting New England and the Province of Quebec, and, because of the project-funding that financed the line, that facility possesses the attributes of merchant high-voltage DC transmission facilities.

4. The Hydros add that their capacity is fully subscribed. The Hydros also claim that they have no OATT under which to administer and recover the costs of new interconnections and related upgrades. Further, the contractual arrangements that are the Hydros' source of revenues limit the Hydros' ability to undertake the capital construction and capacity expansion that would be required for a new interconnection. The Hydros also state that the decisional authority for such capital construction and capacity expansion is vested by those agreements in third parties.

5. The Hydros claim that imposing the requirements of Order No. 2003 could potentially have profoundly adverse consequences for the underlying financing of Phase I/II in particular and of merchant transmission in general.

6. Specifically, the Hydros argue that: (1) there are significant technical factors that make generator interconnection problematic and ultimately unlikely; and (2) they do not have an OATT on file with the Commission, and do not fall within the paradigm that the Commission and interested parties used in the creation of Order No. 2003 (which involved interconnections to networked alternating current transmission facilities owned by public utilities that provide access to those facilities through OATTs).

**Notice of Filings and Interventions**

7. Notice of the Hydros' filing was published in the *Federal Register*, 69 Fed. Reg. 6964 (2004), with protests or interventions due on or before February 10, 2004. A motion to intervene was filed by Hydro-Quebec Transenergie. Motions to intervene and protests were

---

<sup>4</sup> See *supra* note 3.

filed by ISO New England Inc. (ISO-NE)<sup>5</sup> and H.Q. Energy Services (U.S.), Inc. (HQUS). Additionally, the Hydros submitted an answer in response to the protests of ISO-NE and HQUS.

8. ISO-NE argues that good cause exists to grant the Hydros' waiver petition, but solely on the basis that, due to the unique aspects of the facilities (size, location and their integrated nature), any interconnection to the facilities creates additional risk of failure or inappropriate operation of the bulk power system. However, ISO-NE adds that the Commission should reject the Hydros' argument that waiver be granted because general "technical impediments" may impede additional interconnections. ISO-NE states that the Hydros have not provided sufficient and reliable information to substantiate such broad claims.

9. HQUS states that the Hydros should not be granted waiver of Order No. 2003 and asks that the Commission reject the Hydros' argument that "technical impediments" prevent generators from interconnecting. Further, HQUS argues that access to the facilities should be governed by an independent system operator (ISO) or regional transmission organization (RTO). HQUS also requests that the Commission direct the immediate roll-in of the facilities into ISO-NE or an RTO.

### **Commission Determination**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Hydros' answer and will, therefore, reject it.

11. The Hydros do not currently have an OATT on file with the Commission.<sup>6</sup> As provided in the Commission's regulations adopted in Order No. 2003, public utilities that are not required to file an OATT are not required to make a filing in compliance with Order No. 2003.<sup>7</sup> Therefore, Orders No. 2003 and 2003-A do not apply at this time and no waiver is necessary.<sup>8</sup>

---

<sup>5</sup> ISO-NE also filed a motion for extension of time and request for expedited treatment on February 6, 2004.

<sup>6</sup> See *supra* note 3. It also appears that there are no new circumstances that would cause the waiver of Order No. 888 previously granted to now be inapplicable.

<sup>7</sup> See 18 C.F.R. §35.28(f)(1) (2004).

<sup>8</sup> Inland Power and Light Company, *et al.*, 107 FERC ¶ 61,054 at P 11 (2004).

12. However, should the Hydros receive a request for open access transmission service or large generator interconnection service in the future, the Commission will require that the Hydros file an OATT which must include the *pro forma* LGIP and *pro forma* LGIA within 30 days of receiving such a request. In addition, we will require that the Hydros ensure that any interconnection is coordinated to the fullest extent with ISO-NE (as a representative of an “affected system”) consistent with ISO-NE’s request.

13. Regarding HQUS’s concerns that that the facilities should be governed by an ISO or RTO and that the Commission should order an immediate roll-in of the facilities into ISO-NE or an RTO, the Commission finds that these matters are beyond the scope of this proceeding and that this proceeding is not the appropriate venue for addressing these matters.

The Commission orders:

The Hydros’ Order No. 2003 waiver request is hereby dismissed, since no waiver is necessary at this time.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.